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Supreme Court of the United States

October Term, 1953

No. 386

RISS & COMPANY, INC., A CORPORATION, *Appellant*,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellees*,

THE AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY, AND OTHER CLASS I RAILROADS, *Intervenors-Appellees*.

On Appeal from the United States District Court for the Western District of Missouri

BRIEF OF RISS & COMPANY, INC., IN OPPOSITION TO APPELLEES' MOTIONS TO AFFIRM

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Pursuant to Rule 12, Paragraph 3, and Rule 7, Paragraph 3, of the Revised Rules of the Supreme Court of the United States, appellant, Riss & Company, Inc., respectfully presents its Brief opposing appellees' motions to affirm the judgment of the three-judge District Court entered May 7, 1953. Appeal from the judgment was allowed on August 24, 1953. The Interstate Commerce Commission, appellee, and the Railroads, intervenors-ap-

pellees, each filed a motion to affirm on September 8, 1953. The United States, appellee, filed its motion to affirm on September 11, 1953.

I.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Appellees, for various and conflicting reasons, without regard to prior contentions, the Commission's findings, or the three-judge District Court's findings, erroneously state that the appeal presents no substantial question.

Each appellee in one manner or another urges that the only issue before the Commission concerned interpretation of appellant's temporary operating authority in Docket No. MC-200 (Sub-No. 60TA). The Commission and the Railroads argue that the Commission has authority to interpret temporary operating authority without a complaint or notice and hearing required by Section 204(c) of the Interstate Commerce Act, 49 U.S.C. §304(c). The United States, as well as the Commission and the Railroads, argues that there was a hearing to the extent necessary, namely to the extent that the Commission deemed materials in its files necessary for ascertaining the scope of appellant's temporary operating authority in Docket No. MC-200 (Sub-No. 60TA).

The three-judge District Court rejected appellees' contentions that the Commission properly could have conducted its proceedings under provisions of the Interstate Commerce Act other than Section 204(c), or under a published General Rule of Practice of the Commission other than those governing complaints. The District Court, however, reconstructed the proceedings before the Commission and found compliance with Section 204(c) and the Commission's General Rules of Practice governing complaints.

At each stage in this case, before the Commission, before the District Court, and now before this Court, appellant has been required to meet new arguments, new hyperbole, and new documents from the Commission's files which are urged in support of the orders here under review. Appellees' motions to affirm demonstrate the process of shuffling which has characterized this case from the outset. Appellees request this Court to affirm on grounds which were rejected by the District Court as well as on grounds never urged before the District Court.[1] The arguments advanced by appellees emphasize the basic error committed by the District Court in reconstructing the proceedings before the Commission and in judging each step by the Court's standards without regard for established Commission procedure, the understanding of the parties and of the Commission during the proceedings before the Commission, principles established by this Court's decisions, or the provisions of the Administrative Procedure Act.

The District Court, after reconstructing and sustaining the proceedings before the Commission, declined to review the orders here involved on their merits. The sole ground offered by the District Court for not reviewing was that appellant had failed to bring before the Court enough of the record before the Commission. Specifically, the District Court found that the absence of appellant's certificate of public convenience and necessity in Docket No. MC-200 (Sub-No. 46) precluded review. That the lower court's action was unfounded is amply demon-

[1] For example, the Railroads urge in their motion to affirm that appellant did not exhaust its administrative remedies. The Railroads, in their answer to appellant's complaint in the District Court, admitted that appellant had exhausted its administrative remedies and never urged otherwise before the District Court.

strated in appellees' motions to affirm. The Railroads, for example, in this connection state:

> In its motion for new trial, [appellant] contended that the order in question was sufficiently before the court, that the court should take judicial notice of the order, that there was no question which needed to be considered in the light of the scope of the order, and then proceeded to re-argue the merits of the case. The other parties in one fashion or another granted that the order was sufficiently before the court, and the interested defendants, namely, the railroads, argued the merits *in extenso* in arguing the motion for new trial. The court dismissed the motion for new trial without opinion or discussion. Obviously, therefore, the court considered all the arguments of all the parties presented to it at that time, including the merits, in dismissing the motion for new trial, and, therefore, ultimately dismissing the complaint, fully affirmed the I.C.C.

The variety of contentions made by appellees in support of affirming manifests the complete confusion which has characterized this case from its outset. The only thing certain in the entire proceedings is the effect which the orders here involved will have upon appellant. Appellant's temporary operating authority will be emptied of significance. Appellant will be denied authority to continue to transport explosives to and from most of the places shipping and receiving explosives within the territory covered by its operating authority.

Because of the rampant confusion demonstrated in appellees' motion to affirm, it is imperative that the facts pertaining to the controversy as well as the facts pertaining to the proceedings before the Commission and the findings of the Commission and of the District Court be considered in detail at this time. Such consideration will demonstrate that appellees' contentions in support of their motions to affirm are without substance and that the questions involved on this appeal are of substantial im-

portance to the entire motor carrier industry as well as to appellant.

The report of the Commission, dated June 2, 1952, in this proceeding is attached to this Brief as Appendix A. This report will appear in the published reports of the Commission at 54 M.C.C. 531-42.

A. The District Court Rejected Appellees' Contentions That Appellant Was Not Entitled to Notice and Hearing Under Section 204(c) of the Interstate Commerce Act and the Commission's General Rules of Practice Covering Complaints.

Before the District Court appellees urged, on a variety of grounds, that the orders here involved were properly issued under provisions of the Interstate Commerce Act other than Section 204(c). The District Court rejected these contentions *in toto*. Appellees again attempt to raise the same issues before this Court.

Appellees urge that the relief requested by the Railroads and that granted by the Commission was simply interpretation of appellant's operating authority in Docket No. MC-200 (Sub-No. 60TA). Appellees cite as conferring power upon the Commission to interpret operating authority Section 204(a)(6) of the Interstate Commerce Act, 49 U.S.C. §304(a)(6), which reads:

> To administer, execute, and enforce all provisions of this part, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration.

The District Court noted:

> The Commission has the power to interpret the meaning of a motor carrier certificate issued by it. Such is a necessary power to enable it to perform its duties under Section 204(a)(6) of the Act.

The District Court, however, found that the relief requested by the Railroads was not simply interpretation but a request

> that the Commission "require Riss to confine its operations under Sub 60TA to the routes and points authorized in the certificate issued Riss & Company under MC-200 Sub 46 dated February 21, 1950."

The relief granted was precisely that requested. The orders here involved compel appellant to restrict its transportation of explosives under its operating authority in Docket No. MC-200 (Sub-No. 60TA) to the routes and points where it may transport commodities other than dangerous explosives under a certificate issued in Docket No. MC-200 (Sub-No. 46) on February 21, 1950. The District Court found that the orders here involved could only have been issued under power conferred upon the Commission by Section 204(c) of the Interstate Commerce Act and not by virtue of any general power conferred in Section 204(a)(6).[2] The provi-

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[2] The Commission also apparently urges in its motion that the findings of the Commission upon which the orders here involved were based would be subject to attack in any subsequent action against appellant in a District Court to assess criminal penalties or to enjoin operations under, respectively, Sections 222(a) or 222(b) of the Interstate Commerce Act, 49 U.S.C. §§ 322(a) and 322(b). The Commission argues that the District Court erred in this connection. The District Court stated and found:

> "The force of [appellant's] position is, that unless [appellant] is given the notice and granted the hearing accorded by Section 204(c), [appellant] will be denied opportunity to challenge the interpretation of Sub 60TA as made by the Commission in a Judicial proceeding against it. This position is sound [citing cases]. This is the legal doctrine that orders of the Commission are not subject to 'collateral' attack in Judicial proceedings but must be tested Judicially in direct review of such orders."

Appellant directs the Court's attention to the decisions cited by the Commission, which are the same ones as cited by the District Court, and clearly support the finding of the District Court.

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sions of Section 204(c) of the Interstate Commerce Act and not of Section 204(a)(6) would govern even if the Railroads had sought solely an interpretation of appellant's operating authority and the Commission had acted accordingly. As the District Court stated:[3]

> We have been cited no determination of the Commission based upon its construction of a certificate and resulting in an order against the certificated carrier where the Commission did not accord a hearing in respect to such construction by it.

In their insistence upon avoiding the implications for this appeal of the requirements of a complaint and notice and hearing in Section 204(c) of the Interstate Commerce Act, 49 U.S.C. §304(c), appellees urge that because the operating authority involved is temporary operating authority issued under Section 210a(a) of the Act, 49

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[3] This was not a petition by a motor carrier seeking clarification of its own operating authority. Under such circumstances there may be cause for dispensing with the requisites of a hearing and the Commission has, on occasion, acted accordingly, presumably under Section 204(a)(6). *Carroll Trucking Company, Interpretation of Certificate*, 52 M.C.C. 178. In the present case proceedings were instituted before the Commission by the filing of a petition by appellant's competitors, the railroads. Under such circumstances, in an adversary proceeding, the Commission has without known exception other than in this case required compliance with Section 204(c) of the Act and its General Rules of Practice governing complaints, referring the matters to an examiner for hearing and deciding on the record made upon such hearing. For example: *Fleetlines, Inc., v. Osbourn Trucking Company*, 53 M.C.C. 149; *Akers Motor Lines, Inc.*, v. *Malone Freight Lines, Inc.*, 53 M.C.C. 353, sustained *sub nom. Malone Freight Lines, Inc.*, v. *United States*, 107 F. Supp. 946 (D.C.N.D. Ala.), aff'd 343 U.S. 925; *Garment Truckmen Ass'n of New Jersey* v. *Middle Atlantic States Motor Carrier Conference, Inc.*, 53 M.C.C. 761; *Campbell Sixty-Six Express, Inc.*, v. *Frisco Transportation Company*, 43 M.C.C. 641. Appellant cited these and several other Commission decisions on this point to the District Court.

U.S.C. §310a(a), the requirements of Section 204(c) do not apply.[4] Thus, the Commission urges:

> If the Commission, in its discretion, may grant a temporary certificate without hearing or other proceeding, as the statute provides, the interpretation thereof must require no less discretion or different procedure.

In the same vein the Commission argues:

> To sustain the technical contentions of Riss herein would be a dangerous precedent, in respect to Commission discretion in issuing temporary authority, requiring much more time and careful study of applications than has heretofore been given, particularly as to those relating to the needs of the Defense Department.

Appellees made the same arguments before the District Court, which brushed them all aside, simply stating in a footnote:

> We are not impressed by the contention that a *temporary* certificate is not within Section 204(c) as fully as a permanent certificate.

Appellees, nevertheless, continue in their attempt to infuse into this case the notion that the Commission need not give so careful consideration prior to the issuance of an order compelling a motor carrier to cease and desist conducting operations when the motor carrier claims such operations are proper under temporary authority as when the motor carrier cites permanent au-

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[4] Appellees also urge that the proceedings were proper under Rule 102 of the Commission's General Rules of Practice. In this connection the District Court found:

> "Rule 102 is a catch-all providing a remedy where no other Rule does so. Since there are other Rules governing 'complaints' and since this 'petition' is, in essence, a 'complaint', those Rules and not Rule 102 applies here."

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thority.[5] These attempts by appellees to distinguish permanent from temporary operating authority are wholly devoid of merit.

Temporary operating authority, during its term, is no more elastic or uncertain than permanent authority. Temporary operating authority can be issued only to meet an immediate and urgent need. Section 210a(a), Interstate Commerce Act, 49 U.S.C. §310a(a). The terms used in granting such authority, therefore, must be framed to meet such a need. The consequence of operations without appropriate operating authority from the Commission are no different whether the motor carrier contends that the operations were conducted under temporary or permanent authority. The results in this case, so far as appellant is concerned, of the Commission's cease and desist order are no different because the Railroads made allegations of operations allegedly conducted under temporary operating authority than the results would be if the Railroads' allegations were made concerning permanent authority.

The Commission did not purport in this case to be revising or revoking any or all of appellant's operating

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[5] Not only do they make the same arguments made before the District Court, appellees add new ones. For example, in support of their contention (now for the first time made) that appellant had not exhausted its administrative remedies, the Railroads argue that appellant could have at any time, and did on August 25, 1953, file applications under Section 210a(a) of the Act, 49 U.S.C. §310a(a), for temporary operating authority covering points prohibited under the orders here involved. The railroads, searching the Commission's files for anything that might conceivably be urged in support of the orders here involved, neglected to point out that the Department of Defense of the United States supported the new applications, that the Railroads filed extensive protests, and that the Commission has never acted upon the applications.

authority in Docket No. MC-200 (Sub-No. 60TA). The majority of the Commission stated:

> The temporary authority [in Docket No. MC-200 (Sub-No. 60TA)] is now conditioned to expire upon final determination of the application in No. MC-200 (Sub-No. 84), in which Riss seeks permanent authority to transport dangerous explosives.
>
> • • • •
>
> We do not consider the allegation that the importance of Riss' service to the Department of Defense has been ignored by the filing of the railroads' petition relevant to the issue herein.[6]

Appellant's application for permanent authority in Docket No. MC-200 (Sub-No. 84), to which the majority referred, was before this Court in *Riss & Company, Inc.* v. *United States*, 341 U.S. 907. The Commission urged on that appeal as it urges now that appellant was not entitled to a hearing. As a result of this Court's *per curiam* decision, the Commission ordered a hearing *de novo* on the application in Docket No. MC-200 (Sub-No. 84). The temporary operating authority in Docket No. MC-200 (Sub-No. 60TA) *inter alia*, which had been rescinded by the Commission after the District Court's decision on Sub-No. 84, was reinstated and made effective pending final determination of the application in Sub-No. 84. The Railroads participated as protestants in Sub-No. 84 from the outset. When a new hearing was held on the application in Sub-No. 84, during the latter part of 1951 and the early part of 1952, extensive testimony

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[6] The majority also stated:

"Moreover, the Department of Defense has not intervened herein, although aware of the filing of the railroads' petition."

Counsel representing the Commission admitted before the District Court that there was nothing in the Commission's records to show that the Department of Defense was aware of the pendency of the railroads' petition. (Transcript page 73). The Commission in its motion to affirm apparently accuses the Department of Defense of joining with appellant in seeking to perpetuate appellant's transportation of explosives under the operating authority here involved.

was presented on behalf of appellant, the Department of Defense of the United States, numerous railroads, shipping groups, motor carriers, states, cities, and other organizations. Appellant pointed these facts out to the Commission in its motion to dismiss and answer to the Railroads' petition. Appellant urged that the application proceedings in Sub-No. 84 were the appropriate forum for determining the Railroads' claims of unwarranted damage resulting from appellant's operations.[7] The minority of the Commission (three) accepted this position, citing Section 9(b) of the Administrative Procedure Act, 5 U.S.C. §1008(b).

Since the Commission argues in its motion that the sole issue before the Commission was interpretation of appellant's operating authority in Docket No. MC-200 (Sub-No. 60TA), and since the majority of the Commission deemed the existing need for appellant's service irrelevant, it is a contradiction and an absurdity for the Commission also to urge in its motion that sustaining appellant's contentions on this appeal will have serious consequences upon the issuance of temporary operating authority. The latter argument makes sense *only* if the Commission now is admitting that something other than interpretation was involved in this case. It is meaningful only if the Commission, in issuing temporary operating authority, acts on the assumption that it can revise the authority granted at its whim, without considering the scope of the authority granted, the need which led to issuance, or the need existing at the time it decides upon revision.

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[7] In this connection, appellant noted:

"During the course of the proceedings in Sub-No. 84 which have lasted over four years, Riss has shown extensive operations under Sub-No. 60TA which the railroads now claim to have been illegal. Riss, to petitioners' knowledge, has been operating its temporary authority in Sub-No. 60 TA for almost six years and now for the first time the railroads question the propriety of these operations."

B. The District Court Erred When, After Finding That the Commission Had Conducted the Proceeding in Disregard of Section 204(c) of the Interstate Commerce Act and the Commission's General Rules of Practice Governing Complaints, It Found That the Statutory Requirements and the Requirements of the Rules Were Met.

Despite the fact that the District Court rejected all contentions of appellees that appellant was not entitled to a complaint and notice and hearing under Section 204(c) of the Interstate Commerce Act and the Commission's General Rules of Practice governing complaints, the District Court reconstructed the proceedings before the Commission and determined that appellant had been accorded the requisite notice and hearing on a complaint. In connection with showing the invalidity of the District Court's determination and the lack of merit in appellees' contentions that appellant had a hearing even though not entitled to one, it is necessary first to describe in detail the proceedings before the Commission, the facts in controversy before the Commission, the findings of the Commission, and the findings of the District Court. It then can be demonstrated that appellant was not accorded the requisite notice and hearing on a complaint before the Commission.

1. *The Commission Issued The Orders Here Involved In Disregard Of Section 204(c) Of The Interstate Commerce Act And Its General Rules of Practice Governing Complaints.*

On February 26, 1952, the Railroads filed a petition entitled "Petition for Issuance of a Cease and Desist Order" in Docket No. MC-200 (Sub-No. 60 TA). On April 1, 1952, appellant filed its motion to dismiss and answer to the Railroads' petition. Appellant urged, in support of its motion to dismiss, that the relief sought

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by the Railroads could only be obtained from the Commission, if at all, in a complaint proceeding. The majority of the Commission (six) in the report which is part of the order of June 2, 1952, overruled appellant's motion to dismiss, finding that the Railroads' petition:

> properly may be considered under rule 102 of our General Rules of Practice, and it is accepted for filing.

On June 20, 1952, appellant filed its petition for reconsideration, pointing out the lack of statutory authority for the action taken by the Commission on a petition and requesting notice and hearing in accordance with Section 204(*c*) of the Interstate Commerce Act and the Commission's General Rules of Practice governing complaints. The Railroads filed a reply to appellant's petition on July 9, 1952. By order dated July 14, 1952, the Commission denied appellant's petition.

The Commission's orders of June 2, 1952 and of July 14, 1952 are the orders involved in this appeal.

2. *Serious Issues of Fact and Law Were Raised Before The Commission.*

(a) The Railroads' Petition.

The Railroads, in their petition of February 26, 1952, sought a Commission order compelling appellant to cease and desist conducting operations which they alleged were being conducted and which they alleged were unlawful. The railroads alleged that appellant was conducting operations under Docket No. MC-200 (Sub-No. 60TA), which was issued on April 15, 1946, in excess of the scope of appellant's certificate of public convenience and necessity in Docket No. MC-200 (Sub-No. 46), which was issued on February 21, 1950, and that such operations were unlaw-

ful. The terms of appellant's operating authority in Docket No. MC-200 (Sub-No. 60TA) are as follows:

DANGEROUS EXPLOSIVES,

To, from, and/or between points and places authorized to be served in connection with Docket Nos. MC 30077 and effective Sub Nos. thereunder which were acquired by Applicant herein.

The Railroads urged that appellant's certificate in Docket No. MC-200 (Sub-No. 46), was issued on the basis of an application, originally given Docket No. MC-30077, filed by appellant's predecessor under the "grandfather" proviso of Section 206(a) of the Interstate Commerce Act, 49 U.S.C. §306(a). They stated that the Commission had issued an order on February 3, 1945, granting a portion of the "grandfather" claims and they argued that the authority granted appellant on April 15, 1946, in Docket No. MC-200 (Sub-No. 60TA), was limited in scope to the authority recommended in the Commission's order of February 3, 1945 in Docket No. MC-200 (Sub-No. 46), plus the subsequent portions of the "grandfather" claims which were granted by the Commission.

(b) APPELLANT'S MOTION TO DISMISS AND ANSWER.

Appellant, in its motion to dismiss and answer filed on April 1, 1952, contended that the operations authorized by the temporary operating authority issued in Docket No. MC-200 (Sub-No. 60TA) on April 15, 1946, were equal in scope to the full extent of the "grandfather" claims of appellant's predecessor, originally given Docket No. MC-30077, as well as to the scope of certain certificates which had been issued to appellant's predecessor. Appellant pointed out that the word "authorized" in the operating authority in Docket No. MC-200 (Sub-No. 60TA) was used by the Commission as a term of reference to include the scope both of appellant's predecessor's "grandfather"

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claims and its certificates. Appellant also pointed out that the Commission's order of February 3, 1945, recommending the grant of some of the "grandfather" claims was not final and that, in fact, the Commission had, by order dated October 4, 1948, granted certain portions of the "grandfather" claims which had been denied in the order of February 3, 1945.[8]

Appellant pointed out that the provisions of Section 210a(a) of the Interstate Commerce Act, 49 U.S.C. §310a (a), authorized the issuance of temporary operating authority only upon a showing of an immediate and urgent need for which no other service is available. Appellant noted that the "grandfather" claims and the proceedings relating to them were in no way connected with the transportation of explosives. Appellant argued that ac-

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[8] The Commission urges in its motion concerning the temporary operating authority granted to appellant in Docket No. MC-200 (Sub-No. 60TA) on April 15, 1946:

> "More than a year previously the Commission had on February 3, 1945, decided and specifically described the 'grandfather' authority of Riss & Company, under MC-200, Sub 46 (as stated in the application 'formerly Monark Motor Freight System Docket MC 30077).' The language of that application and the granting of the certificate do not permit of any other interpretation than that the scope of the authority granted, in No. MC-200 (Sub-60TA), was limited precisely to routes and points named in the 'order of February 3, 1945 in x x x No. MC-200, Sub 46.'"

The Commission's facts are clearly in error. Further portions of the "grandfather" claims were granted by order of the Commission dated October 4, 1948. During the entire time of the pendency of the "grandfather" claims, appellant was entitled to conduct operations to the full territorial extent of those claims. Appellant's right to conduct such operations was confirmed in a memorandum opinion of the three-judge District Court for the Western District of Missouri on February 9, 1948. The "grandfather" claims remained pending until after the issuance of the certificate by the Commission on February 21, 1950 and at least until the decision of the three-judge District Court for the Western District of Missouri, on September 27, 1951, in *Riss & Company, Inc.* v. *United States*, 100 F. Supp. 468, aff'd 342 U. S. 937.

ceptance of the Railroads' contentions necessarily would mean that the temporary operating authority issued in Docket No. MC-200 (Sub-No. 60TA) on April 15, 1946 was of an indeterminate scope, whose bounds could be determined only by subsequent action of the Commission in a wholly unrelated proceeding.

(c) The Commission's Findings of Fact.

The majority of the Commission found that appellant's predecessor (Monark Motor Freight System, Inc.)

> originally was granted temporary authority in 1942, prior to the transfer of its operating rights to Riss, to transport dangerous explosives to the same extent as that set forth in No. MC-200 (Sub-No. 60-TA).

The majority found:

> During the entire period of adjudication of the claimed "grandfather" rights [in Docket No. MC-30077, which later was incorporated within Docket No. MC-200 (Sub-No. 46)] and since then, with the exception of a few days, Riss has held continuing temporary authority to transport dangerous explosives to the same extent as set forth in No. MC-200 (Sub-No. 60 TA). The temporary authority is now conditioned to expire upon final determination of the application in No. MC-200 (Sub-No. 84), in which Riss seeks permanent authority to transport dangerous explosives.

The majority stated:

> Certificate No. MC-200 (Sub-No. 46) embraces both the authority finally determined in the "grandfather" application and the certificated authority held by Monark and transferred to Riss.
>
> The principal issue before us, however, is whether Riss, under the terms of its temporary authority in No. MC-200 (Sub-No. 60-TA), may provide service on dangerous explosives to the same extent that it claimed operating rights in the Monark "grandfather" application, or whether Riss, since the issu-

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ance and effectiveness of certificate No. MC-200 (Sub-No. 46), is authorized to transport dangerous explosives only to the same extent as it may transport other commodities as evidenced by such certificate.

The majority found: that the temporary operating authority held by appellant in Docket No. MC-200 (Sub-No. 60TA) was by its terms "directly tied to the points authorized to be served in No. MC-30077"; that the "grandfather" claims in Docket No. MC-30077 [later incorporated within Docket No. MC-200 (Sub-No. 46)], which were not confirmed, are not "authorized" points; and that appellant's operating authority in Docket No. MC-200 (Sub-No. 60TA) is equal in territorial scope to the territorial scope of the certificate issued in Docket No. MC-200 (Sub-No. 46). The majority appended to its report the specific designation of the points, routes and limitations specified in the certificate in Docket No. MC-200 (Sub-No. 46).

3. *The District Court Reconstructed The Proceedings Before The Commission And Sustained The Proceedings As Reconstructed.*

The District Court found:

> The Commission regarded this proceeding as being under its Rule 102, which is one of its adopted General Rules of Practice, regulating procedures before it. Rule 102 is a catch-all providing a remedy where no other Rule does so. Since there are other Rules governing "complaints" and since this "petition" is, in essence, a "complaint", those Rules and not Rule 102 applies here.

The District Court then determined for itself:

> Plaintiff sets forth (Appendix B of it main brief) what it states are all of the Rules governing "complaints" pertinent here. Accepting this unchallenged statement, this "petition" sufficiently complies therewith to overcome this objection by plaintiff. We

> conclude that this "petition" is a sufficient *complaint* within Section 204(c) and the Commission's General Rules of Practice governing complaints.

The Court found that appellant had proper and sufficient notice because appellant had received a copy of the Railroads' petition and had filed a motion to dismiss and answer.

The Court found that appellant had not waived a hearing and that the

> "hearing" was made up of the pleadings before the Commission alone. The report and order of the Commission of June 2, 1952, were made without further or other appearances of the parties beyond these pleadings and without opportunity to offer evidence.

The Court held that the issue of whether appellant was conducting the operations alleged by the Railroads was a question of fact which, the Court found, was not disputed since appellant had admitted in its motion to dismiss and answer that it was conducting the operations alleged. The Court held that the interpretation of appellant's operating authority in Docket No. MC-200 (Sub-No. 60TA) was, under the circumstances in this case, solely a question of law. The Court stated, concerning the Commission's power to take official notice under the circumstances:

> It would seem that this power would extend, at least, to "notice" of such orders and applications therefor as have been directly drawn to its attention in pleadings before it; which are parts of the historical development of the immediate issues before it; and which relate directly to the rights of a party to such issues. This should be particularly true where the issue is one purely of law and where reference to earlier acts of the Commission is solely to aid in resolving such issue. Here the earlier application and orders which were considered pertinent and determinative by the Commission are identified in its

> Report and its Order of June 2, 1952. From the Report and this Order the Commission makes clear what it considered in reaching its decision. Such is the situation here.
>
> Not only did the parties direct the attention of the Commission to the particular prior proceeding pertinent to the interpretation of Sub-No. 60TA but each side (in its pleadings) presented its views and written arguments for the interpretation it deemed correct. The only thing lacking was oral argument. As to that, no *specific* request for "oral" argument was ever asked. What Riss sought was an entire hearing (which normally would include oral argument).

The District Court held, without citing any cases, "that the requirement of an adequate hearing before the Commission has been met."

4. *There Was No Complaint Or Notice Or Hearing.*

Not only did the District Court reconstruct the proceedings which in fact took place before the Commission, the Court adopted a unique concept of administrative law. The District Court's determination that the proceedings before the Commission were proper under Section 204(c) of the Interstate Commerce Act and the Commission's General Rules of Practice governing complaints ignored the consistent Commission practice in complaint proceedings and the understanding of the parties during these proceedings before the Commission, the provisions of the Administrative Procedure Act, and prior decisions of this Court.

Appellant respectfully submits that the District Court erred in refusing to set aside the orders here involved after the Court had found: (1) that these orders could only have been entered under Section 204(c) of the Interstate Commerce Act and in accordance with the Commission's General Rules of Practice governing com-

plaints; and (2) that the Commission treated this proceeding under some different authority and in accordance with different procedures. The District Court should not have substituted its judgment in this connection for that of the Commission. Compare *Securities & Exchange Commission* v. *Chenery Corporation*, 318 U. S. 80.

The District Court should at least have considered the consistent administrative practice of the Commission in connection with complaint proceedings. Compare *United States ex rel Hirshberg* v. *Cooke*, 336 U.S. 210. The Commission without known exception has referred every complaint proceeding for hearing before an examiner and has determined the issues upon the record made at such a hearing.[9] The Commission in its motion to affirm recognizes that fact:

> That kind of hearing [under Section 204(c) of the Interstate Commerce Act] would be before an examiner, for the purpose of introducing testimony of witnesses.

The District Court apparently took the Commission's consistent practice in such cases into consideration in determining whether or not appellant was entitled to a hearing and ignored the Commission's practice in determining whether there was a hearing in this case.

Appellees never disputed appellant's contention before the District Court that the Commission has never in any other case involving similar issues proceeded except upon a complaint, including a hearing before an examiner. Appellees candidly admitted before the District Court that

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[9] See the text and note at note 3, *supra*, concerning some of the cases in which the Commission has followed its consistent practice in complaint proceedings of referring the matters to an examiner for hearing.

the parties before the Commission did not deem this proceeding to be a complaint proceeding. Thus, the Railroads urged before the District Court:

> This is not a complaint proceeding. The Commission has no complaint before it and whatever the provisions of Section 204(c) relating to a hearing are they don't apply to this case. (Transcript page 61).

Before this Court, however, appellees now attempt to rationalize the Commission's action in this case in the light of the reconstruction of the proceedings by the District Court. The Commission, for example, urges that there would have been a regular hearing before an examiner except for the fact that appellant had admitted that it was conducting the alleged operations, leaving no issue of fact to be resolved by such a hearing. The Commission in taking this position, attempts to distinguish *Akers Motor Lines, Inc.*, v. *Malone Freight Lines, Inc.*, 53 M.C.C. 353, sustained *sub nom. Malone Freight Lines, Inc.*, v. *United States*, 107 F. Supp. 946, aff'd 344 U.S. 925. The Commission now urges that the only reason that the Commission referred the complaint in the *Akers* case to an examiner was "that pleadings did not admit actual operations or the legal standing of complainants." The Commission urged before the District Court that the reason that there was a complaint proceeding, including a hearing before an examiner, in the *Akers* case was because complainants did not know that the same type of relief could be obtained by a petition.[10] (Commission's brief before the District Court, page 26).

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[10] As an alternative theory, the Commission in its motion urges that the Commission as a whole "heard" the complaint proceeding, noting that the Commission is authorized to hear testimony and receive other evidence. In this connection, the Commission urges:

> "Had Riss made any showing as to other evidence necessary to the decision, the Commission had authority to receive it

The fact of the matter is that since the Commission did not consider the proceedings before it to be on a complaint, all of the rationalizing arguments of appellees to the effect that there was a hearing on a complaint in this proceeding are without foundation. No one, including appellant, can, at this stage, state what the Commission would have done if it had determined that the matters before it were appropriate for complaint proceedings. Presumably the Commission would have abided by its consistent practice and would, therefore, either have granted appellant's motion to dismiss the Railroads' petition or, if it found the petition met the requirements of a complaint, have referred the issues to an examiner for a hearing.

In concluding that appellant had "an adequate hearing" the District Court, in so far as its opinion discloses, failed even to consider the import of prior decisions of this Court or of the provisions of the Administrative Procedure Act.

The District Court found that appellant had not waived a hearing before the Commission, even if such a hearing could be waived. Appellant's requests for a hearing were denied by the Commission. Appellant, therefore, having requested a hearing, was entitled to a hearing and to observance of its rights under Sections 5 and 7 of the Administrative Procedure Act, 5 U.S.C. §§ 1004 and 1006. *Riss & Co., Inc.*, v. *United States*, 341 U.S. 907; *United*

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or to refer to a Division, board, or an examiner to hear and receive it."

The theory of the Commission is unique in this case. It, however, demonstrates a position taken by appellees throughout this proceed to the effect that even though the statute provides for a hearing, even though appellant requested a hearing, and even though a hearing before an examiner had been held in every other similar case, appellant must demonstrate its need for a hearing before appellant would be entitled to a hearing.

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States v. *L. A. Tucker Truck Lines, Inc.*, No. 18, October Term, 1952, 97 Law Ed. 4. Since Section 204(c) of the Interstate Commerce Act requires the Commission to issue orders such as those here involved only after notice and hearing, the Commission could not properly make findings, decide the issues, or grant the requested relief without notice and hearing. *Interstate Commerce Commission* v. *Louisville & N. R. Co.*, 227 U.S. 88; *United States* v. *Abilene & S. R. Co.*, 265 U.S. 274. The Commission could not take official notice of matters in its files which were not presented at a hearing and which appellant had no opportunity to explain or rebut. *United States* v. *Abilene & S. R. Co., supra;* Section 7(d), Administrative Procedure Act, 5 U. S. C. § 1006(d). The Commission could not by the use of the implement of official notice deprive appellant of a fair hearing. *United States* v. *Pierce Auto Freight Lines, Inc.*, 327 U. S. 515. Appellant was entitled to an opportunity to cross-examine any witnesses presented, to inspect materials relied upon by the Railroads, and to offer its own evidence in rebuttal or explanation. These are the basic requisites of a fair hearing. *Interstate Commerce Commission* v. *Louisville & N. R. Co., supra.* The wisdom of all of these established principles is vindicated by the confusion and uncertainty created by the decision of the District Court in their breach.

The concept of a hearing necessarily must include the concept of a record determined by such a hearing. As this Court has pointed out, the Commission cannot "where rights depend upon facts . . . disregard all rules of evidence, and capriciously make findings by administrative fiat." *Interstate Commerce Commission* v. *Louisville & N. R. Co.*, 227 U.S. 88, at 91. Section 7(d) of the Administrative Procedure Act, *supra*, provides that

> [t]he transcript of testimony and exhibits, together with all papers and requests, filed in the proceeding, shall constitute the exclusive record for decision. . . .

This proposition does not exclude the possibility of official notice. On the contrary, it provides a mechanism whereby parties may know of what official notice was taken and be afforded an opportunity to explain or rebut. *United States* v. *Abilene & S. R. Co., supra*; Section 7(d), Administrative Procedure Act, *supra*.

There was no transcript of testimony or of exhibits in this case. As the District Court stated:

> This "hearing" was made up of the pleadings before the Commission alone.

It might, therefore, be assumed that the record in this proceeding was determined by the Railroads' petition and appellant's motion to dismiss and answer. This is apparently the position taken by the Railroads and by the Commission before this Court, urging that these two documents and the documents in the Commission's files to which the Railroads and appellant referred constituted the record before the Commission in this proceeding. It is apparent, however, from the opinion of the majority of the Commission and from the District Court's opinion, that the Commission did not limit its consideration to such documents.

The District Court apparently found that the record in this proceeding before the Commission consisted of all documents in the Commission's files which the Commission considered "pertinent and determinative" and "identified in its Report and its Order of June 2, 1952." The Commission did not, as the Railroads and the Commission indicate in their motions to affirm,[11] limit its con-

[11] The Commission and the Railroads in their motions argue that a determining factor in the Commission's construction of appellant's temporary operating authority in Docket No. MC-200 (Sub-No. 60TA) was the phrasing of appellant's application for that operating authority. This was the same argument made by the Railroads in their original petition instituting the proceeding

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sideration to documents in the Commission's files in Docket No. MC-200 (Sub-No. 60TA). The majority of the Commission in its report made findings concerning the scope of appellant's predecessor's (Monark Motor Freight System, Inc.) temporary operating authority and concerning the temporary operating authority held by appellant prior to that now held by appellant in Docket No. MC-200 (Sub-No. 60TA). Documents in the files relating to these other temporary operating authorities, therefore, must have been considered by the majority "pertinent and determinative" in construing appellant's temporary operating authority in Docket No. MC-200 (Sub-No. 60TA). Under the circumstances, therefore, the Commission and the Railroads now seek to have this Court judge the findings of the Commission on grounds other than those which the opinion of the majority of the Commission adopted. Concerning this argument, this Court has ruled:

> The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based. *Securities & Exchange Commission* v. *Chenery Corporation*, 318 U. S. 80, at 87.

Since the Commission did not limit consideration of documents in its files to those referred to by the Railroads and by appellant, it is impossible to state what was the record in this proceeding. The District Court stated that the Commission specifically referred to those documents it considered "pertinent and determinative".

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before the Commission. The report of the majority of the Commission makes no reference to appellant's application. Moreover, the Railroads and the Commission refer to the Commission's order of February 3, 1945 in Docket No. MC-200 (Sub-No. 46). That order also was referred to by the Railroads in their petition instituting this proceeding before the Commission. The majority of the Commission made no reference to that order. It is not possible, therefore, to conclude, from its Report, even that the Commission considered these arguments.

It is not possible to state what other documents in what other files were consulted by the Commission and considered not "pertinent" or "determinative." This technique, nevertheless, under the opinion of the District Court, constitutes "an adequate hearing." Under such a technique, effective judicial review is impossible since it permits the Commission to determine the record upon which review must be predicated but which need not include all of the documents considered by the Commission.[12] Compare *Ohio Bell Telephone Company* v. *Public Utilities Commission of Ohio*, 301 U. S. 292.

C. The Court Erred in Refusing To Review The Orders Here Involved On Their Merits.

The District Court did not review the orders here involved on their merits, offering as the sole reason appellant's failure to make a part of the record before the Court the certificate of public convenience and necessity in Docket No. MC-200 (Sub-No. 46).

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[12] It was apparent before the District Court, just as it is apparent before this Court, that none of the parties, including appellant, can state with certainty what was the record in this proceeding before the Commission. Appellant submitted in exhibit form before the District Court all of the documents to which the majority of the Commission had apparently referred in its Report and which were necessary for a review of the orders here involved on their merits. Appellees, particularly the Railroads, objected to the receipt of many of these documents on the grounds that they were not part of the record before the Commission even though those documents must have been the ones to which the majority of the Commission had reference in its Report. After the District Court received appellant's exhibits, appellees introduced several exhibits, some of which were by no stretch of the imagination referred to in any way in the Report of the Commission. For example, the Railroads introduced in exhibit form copies of documents from the Commission's files in Docket No. MC-200 (Sub-No. 63TA). There was never any reference either in documents filed by the Railroads or by appellant or in the Report of the Commission to Docket No. MC-200 (Sub-No. 63TA). These documents, however, were offered by the Railroads in support of the orders here involved.

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Consideration of appellant's two major contentions before the District Court concerning the merits of the orders here involved demonstrates that the certificate in Docket No. MC-200 (Sub-No. 46) was unnecessary to such review.

Appellant urged that the temporary operating authority in Docket No. MC-200 (Sub-No. 60TA) is equal in scope to the "grandfather" claims and certificates of appellant's predecessor, Monark Motor Freight System, Inc. Appellant pointed out that the single premise upon which the majority of the Commission based its finding was that the scope of the temporary operating authority to transport explosives issued to appellant, as the Commission found in 1942, was by its terms tied to the disposition of the "grandfather" claims of appellant's predecessor. Without such a premise the majority could not have concluded that, because points covered by the "grandfather" claims not eventually certificated are not "authorized" points for the transportation of general commodities, they are not "authorized" points for the transportation of explosives under the temporary operating authority. Appellant urged that the temporary operating authority was not tied to the disposition of the "grandfather" claims; that the reference to those claims and to the certificates acquired by appellant from Monark Motor Freight System, Inc., was solely for the purpose of delineating the territorial scope of the temporary authority at the time it was granted; that since appellant was entitled to conduct operations to the full extent of the "grandfather" claims at the time of the issuance of the temporary operating authority, the temporary operating authority was equal in scope to the "grandfather" claims as well as to the certificates. In support of its position, appellant cited the word "authorized" in the

authority,[13] urging that the use of the word showed that the grant was intended to cover both the scope of the "grandfather" claims and the certificates acquired by appellant from its predecessor. Appellant also urged that the finding that the temporary operating authority was tied to the disposition of the "grandfather" claims meant that the authority when granted was indefinite and uncertain, contrary to Section 210a(a) of the Interstate Commerce Act, 49 U. S. C. §310a(a). Appellant also noted that it was logically impossible to conclude, as the majority did, that the temporary operating authority held by appellant's predecessor was equal in scope to the temporary operating authority held by appellant in Docket No. MC-200 (Sub-No. 60TA), and then to have found that the scope of the temporary operating authority was limited to the certificate in Docket No. MC-200 (Sub-No. 46).[14]

Appellant also argued before the District Court that even if the temporary operating authority properly were limited to the points covered by the certificate issued in

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[13] Appellant's temporary operating authority in Docket No. MC-200 (Sub-No. 60TA) reads as follows:

> "*Dangerous Explosives,*
> To, from, and/or between points and places authorized to be served in connection with Docket Nos. MC 30077 and effective Sub Nos. thereunder which were acquired by Applicant herein."

[14] The temporary operating authority issued to appellant's predecessor, Monark Motor Freight System, Inc., read:

> "*Dangerous Explosives* . . .
> To, from, and/or between points and places now served by Applicant [Monark] as set forth in certificates issued by, and applications pending with this Commission, under MC 30077 and Sub Nos. 1 to 5 inclusive."

Since the "grandfather" claims of Monark were pending on an application with the Commission in Docket No. MC-30077 at the time of the issuance of that temporary operating authority, there could be no doubt that the authority granted covered the full scope of the "grandfather" claims.

Docket No. MC-200 (Sub-No. 46), the majority of the Commission failed to give any effect to the terms "to, from, and/or between points" in the terms of the authority. The majority, in the Appendix to its Report, specified the scope of appellant's temporary operating authority as construed, setting forth not only the same points but also the same restrictions provided for in the certificate in Docket No. MC-200 (Sub-No. 46). Thus, the Appendix to the Report prohibits service between many points which may be served, or prohibits service from a point although allowing service to the point, or prohibits service to a point although service is allowed from the point.

The certificate in Docket No. MC-200 (Sub-No. 46) clearly was unnecessary to the determination of appellant's contentions on the merits even assuming that the record in the proceeding before the Commission consisted solely of documents in files which were referred to by the Commission. Appellant has never urged, as the Commission notes in its motion to affirm, that the Appendix to the Report of the Commission does not properly set forth the points and the manner of service permitted by appellant's certificate in Docket No. MC-200 (Sub-No. 46). The Railroads in their motion to affirm state that all parties granted before the District Court that the certificate in Docket No. MC-200 (Sub-No. 46) was sufficiently before the Court to permit review. Only the United States in its motion urges otherwise. The cases cited by the United States are clearly not in point.

The District Court noted in its opinion that the majority of the Commission stated that its Appendix completely described the points and the manner of service covered by the certificate in Docket No. MC-200 (Sub-No. 46). The Court, however, stated:

> The statement in the Report that the Appendix follows the provisions of permanent Sub-No. 46 is not evidence here of that fact.

Under the District Court's theory of the proceeding in this case before the Commission, "an adequate hearing" was held because the Commission took official notice of documents it considered "pertinent and determinative" and identified these documents "in its Report and its Order of June 2, 1952." Under this theory appellant's only opportunity to rebut or explain apparently would be on judicial review. However, when the District Court came to the point where review on the merits was to be considered, it refused to review because irrelevant material was not in exhibit form before the District Court and refused to accept the uncontested statement in the Report of the Commission that the very document which the District Court deemed necessary for review was an Appendix to the Commission's Report. Appellant respectfully submits that even if the District Court's theory of administrative law is proper in this case, the District Court under its own theory and under the facts in this case was required to review these orders.

D. The Orders Here Involved Empty Appellant's Operating Authority Of Significance.

The Commission has repeatedly recognized in other cases that the need for the transportation of explosives is not the same as the need for transportation of commodities other than explosives. *Strickland Transportation Co., Inc., Extension—Dangerous Explosives*, 49 M.C.C. 595. The Commission also has recognized the special characteristics of the transportation of explosives and has promulgated regulations accordingly. See *Boyce Motor Lines, Inc.* v. *United States*, 342 U. S. 337.

By virtue of its construction of appellant's temporary operating authority in Docket No. MC-200 (Sub. No. 60TA) the Commission has restricted appellant's transportation of explosives to those points where commodities other than dangerous explosives normally move.

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Shippers and receivers of explosives are not normally situated in the large commercial centers to and from which commodities other than dangerous explosives generally move. The orders here involved, however, would restrict appellant's transportation of dangerous explosives generally to large commercial centers. The Commission's orders, therefore, would prohibit appellant from transporting explosives to and from most of the points in the territory covered by this authority where explosives would normally move. As appellant pointed out to the Commission in the documents filed by it with the Commission in this proceeding, the orders here involved would prohibit appellant from transporting explosives to and from many of the points concerning which the Department of Defense of the United States supported a need for permanent motor carrier service in Docket No. MC-200 (Sub.No. 84), which is appellant's pending application for permanent authority covering the temporary operating authority here involved.

CONCLUSION AND REQUEST FOR EXTENSION OF STAY PENDING FINAL DISPOSITION OF THIS APPEAL

This case has been unique from the outset. For the first time, the Interstate Commerce Commission ordered a motor carrier to restrict its operations on the petition of competitors, without referring the issues for hearing to an examiner. Then, the District Court, denying that such orders could be issued without compliance with Section 204(c) of the Interstate Commerce Act, sustained the procedure on a novel theory of Section 204(c), of the Commission's General Rules of Practice, and of administrative law, but refused to review the findings on a technical and unfounded ground. Now, appellees, willing only to accept the ultimate conclusions of the Commission and

of the District Court, urge this Court to affirm on any of a multitude of grounds, some rejecting findings of the Commission and of the District Court, others new in this case. This case emphasizes the necessity for insistence upon observance of procedures established for such cases by the Interstate Commerce Act, the Administrative Procedure Act, and the Commission's General Rules of Practice. Sanctioning of deviation from such procedures can only result in the rampant confusion evidenced in this case, precluding the motor carrier from ever having an opportunity to demonstrate that the orders restricting its operations are unwarranted. Appellant respectfully submits that appellees' motions should be overruled.

Appellant respectfully requests that this Court extend the Order of the Court, dated August 31, 1953, staying judgment and the orders of the Commission here involved pending consideration and action by the Court on the jurisdictional statement, until final disposition of this appeal.

Respectfully submitted,

JOHN B. GAGE
A. ALVIS LAYNE, JR.
JOHN KREAMER
H. CHARLES EPHRAIM
Counsel for Plaintiff-Appellant

APPENDIX A

Interstate Commerce Commission

No. MC-200 (Sub-No. 60-TA)

RISS & COMPANY, INC., INTERPRETATION OF TEMPORARY AUTHORITY

Decided June 2, 1952

Temporary authority in No. MC-200 (Sub-No. 60-TA) construed, and found to authorize the transportation of dangerous explosives only, from, to, between the points, over the routes, and in the manner in which Riss & Company, Inc., is authorized to transport other commodities as specified in its certificate in No. MC-200 (Sub-No. 46). Riss & Company, Inc., found to be conducting operations in excess of such authority. Cease and desist order entered.

Lewyn W. Wickes, James W. Nisbet, Francis J. Steinbrecker, and F. X. Masterson for petitioner.

A. Alvis Layne, Jr., and H. Charles Ephraim for repliant.

REPORT OF THE COMMISSION ON PETITION BY THE COMMISSION:

By petition, dated February 26, 1952, eastern railroads and class I railroads in western territory, hereafter called petitioners or the railroads, have tendered a petition in which they ask that Riss & Company, Inc., hereafter called Riss, be required to cease and desist from the perform-

ance of certain operations which they allege are being conducted beyond the scope of the temporary authority granted to Riss in No. MC-200 (Sub-No. 60-TA). In its reply to the petition, Riss asserts, in part, that the order sought by the railroads is improper relief to be sought by petition, and moves that the pleading be dismissed. We conclude that the petition which, in effect, seeks an interpretation as to the territorial extent of temporary authority granted in No. MC-200 (Sub-No. 60-TA), properly may be considered under rule 102 of our General Rules of Practice, and it is accepted for filing. The motion to dismiss is overruled. A brief review of the circumstances surrounding the issuance of the temporary authority will aid in understanding the issues raised in the petition and reply.

Riss holds temporary authority in No. MC-200 (Sub-No. 60-TA) to transport "dangerous explosives, to, from, and between points authorized to be served in connection with docket No. MC-30077 and effective subnumbers thereunder." No. MC-30077 was the docket number assigned to the application of Monark Motor Freight System, Inc., hereafter called Monark, filed under the so-called "grandfather" clause, section 206 (a) of the Interstate Commerce Act, which, along with the certificates in No. MC-30077 (Sub-No. 3) and No. MC-30077 (Sub-No. 4), was acquired by Riss pursuant to the order of September 28, 1942, in Riss & Co., Inc.—Purchase—Monark M. Freight System, Inc., 38 M.C.C. 563. No. MC-200 (Sub-No. 46) was assigned to the operations so acquired. Monark originally was granted temporary authority in 1942, prior to the transfer of its operating rights to Riss, to transport dangerous explosives to the same extent as that set forth in No. MC-200 (Sub-No. 60-TA). At that time Monark's "grandfather" application in No. MC-30077 was pending, and had not been resolved. It has since been finally determined, and Riss, as successor in interest to Monark,

was found entitled to continue certain operations as a common carrier by motor vehicle, of general commodities, except dangerous explosives among other exceptions, between specified points in a number of States, over regular routes, and of specified commodities, from, to, and between described points, over irregular routes. The territorial extent of these operations is far less than the "grandfather" rights claimed by Riss as successor in interest to Monark.

After various appeals to this Commission, as well as certain court action which it is not necessary to recite herein in order to dispose of the issues raised by the petition and reply, a certificate was issued in No. MC-200 (Sub-No. 46) authorizing such operations, and is now in full force and effect. During the entire period of adjudication of the claimed "grandfather" rights, and since then, with the exception of a few days, Riss has held continuing temporary authority to transport dangerous explosives to the same extent as set forth in No. MC-200 (Sub-No. 60-TA). The temporary authority is now conditioned to expire upon final determination of the application in No. MC-200 (Sub-No. 84), in which Riss seeks permanent authority to transport dangerous explosives.

The railroads in their petition recite that at the time of the issuance of the temporary authority, the Monark "grandfather" rights had not been determined; that the operating rights so acquired are now the subject of a certificate in No. MC-200 (Sub-No. 46); and that the right to transport dangerous explosives by Riss is limited to serving the same points and in the same manner Riss is authorized by the certificate in No. MC-200 (Sub-No. 46) to transport commodities other than dangerous explosives. The railroads claim that Riss, since the certificate in No. MC-200 (Sub-No. 46) has been in effect, is transporting dangerous explosives to and from points not authorized

to be served by the certificate in No. MC-200 (Sub-No. 46), particularly such points as Hingham, Mass., Edgewood, Md., and Radford, Va., to their financial detriment.

In its reply, Riss argues that the temporary authority in No. MC-200 (Sub-No. 60-TA) authorizes it to transport dangerous explosives from, to, and between all points which it claimed to serve as successor in interest to the Monark "grandfather" rights determined in No. MC-200 (Sub-No. 46) as well as between the points which it is authorized to serve by reason of the transfer to it of certain certificates held by Monark in subnumbered proceedings; and that the service which it may perform pursuant to the temporary authority should not contract upon the issuance of a certificate in No. MC-200 (Sub-No. 46), which it terms as unrelated to the need for the transportation of dangerous explosives. Riss contends rather that it may serve all points in the transportation of dangerous explosives which it could serve under the Monark certificates transferred to it, and in addition that it may serve all points which it claimed a right to serve in the Monark "grandfather" application. Riss urges further that the proper proceeding to test the railroad's claim as to the territorial scope of its temporary authority is in the No. MC-200 (Sub-No. 84) application for permanent authority to transport dangerous explosives, and that the issues raised by the railroads in their petition does not allow consideration by us of the importance of Riss' dangerous explosives operations to the Department of Defense.

At the outset, insofar as Riss succeeded in interest by the order in Riss & Co., Inc.—Purchase—Monark M. Freight System, Inc., supra, to the outstanding certificates issued to Monark, by the terms of its temporary authority and so long as it is in effect, it may transport dangerous explosives to the same extent that it is authorized to transport other commodities by the terms of such certificates.

Certificate No. MC-200 (Sub-No. 46) embraces both the authority finally determined in the "grandfather" application and the certificated authority held by Monark and transferred to Riss.

The principal issue before us, however, is whether Riss, under the terms of its temporary authority in No. MC-200 (Sub-No. 60-TA), may provide service on dangerous explosives to the same extent that it claimed operating rights in the Monark "grandfather" application, or whether Riss, since the issuance and effectiveness of certificate No. MC-200 (Sub-No. 46), is authorized to transport dangerous explosives only to the same extent as it may transport other commodities as evidenced by such certificate. In our opinion, the position taken by Riss in its reply is untenable. The temporary authority to transport dangerous explosives is related to the pending permanent application for authority to transport the same commodity, No. MC-200 (Sub-No. 84), only insofar as the expiration date of the temporary authority is concerned, and nothing more. There is no interrelation between the extent of the territory that may be served under the temporary authority and that sought in the permanent application to transport dangerous explosives. The temporary authority, insofar as territorial applicability is concerned, by its very terms, is directly tied to the points authorized to be served in No. MC-30077 (renumbered No. MC-200 (Sub-No. 46)). As noted, at the time of the issuance of the original temporary authority and pending the final determination of the Monark "grandfather" rights, the territory which Riss claimed it might serve exceeded that which Riss finally was found entitled to serve. Points served under color of claimed "grandfather" rights which Riss was later found not entitled to serve by reason of Riss and its predecessor in interest not having conducted bona fide operations on June 1, 1935, and continuously thereafter, are not in any conceivable

sense "authorized" points. They merely are points which Riss claimed it had a statutory right to serve, which it was allowed to serve during the various stages leading to the issuance and effectiveness of its No. MC-200 (Sub-No. 46) certificate, and with respect to which its claims were not substantiated.

As it finally has been determined that Riss is not authorized to serve certain points claimed in No. MC-200 (Sub-No. 46) in the transportation of other traffic, it necessarily must follow that it may not serve such points under the temporary authority in question. There has not been any diminution in the points Riss might serve under its temporary authority, but rather there was a resolution, coincidental with the final determination of No. MC-200 (Sub-No. 46), of the points which it is authorized to serve under such temporary authority. Any other conclusion would leave indefinite and uncertain the extent of the temporary authority that Riss has been granted, and would be administratively as well as logically unsound. The appendix herein details the extent of Riss' authority to transport dangerous explosives under No. MC-200 (Sub-No. 60-TA), from, to, and between the same points and in the same manner that it is authorized to transport other commodities as evidenced in certificate No. MC-200 (Sub-No. 46).

We do not consider the allegation that the importance of Riss' service to the Department of Defense has been ignored by the filing of the railroads' petition relevant to the issue herein. The transportation of dangerous explosives by Riss is authorized only to the extent indicated in the appendix. Any other service in the transportation of dangerous explosives is not authorized in No. MC-200 (Sub-No. 60-TA). If there is a need for additional transportation service, it may be met by the filing of further properly supported applications for temporary or per

manent authority. Moreover, the Department of Defense has not intervened herein, although aware of the filing of the railroads' petition.

As seen, petitioners allege that Riss has been performing service in the transportation of dangerous explosives at points not included in the appendix herein. Riss has not denied this allegation, but rather claims and, in effect, holds itself out to transport dangerous explosives to numerous points not embraced in the appendix. We, therefore, shall order a cessation of such unauthorized operations.

We find that the temporary authority issued to Riss & Company, Inc., in No. MC-200 (Sub-No. 60-TA), authorizes temporary operations in interstate or foreign commerce, as a common carrier by motor vehicle, of dangerous explosives from, to, and between the points, and in the manner set forth in the appendix herein. An order will be entered requiring Riss & Company, Inc., to cease and desist from any operations under No. MC-200 (Sub-No. 60-TA) in excess of those set forth in the appendix.

MAHAFFIE, Commissioner, dissenting:

I would deny the petition. Applicant's temporary authority was by an order dated September 30, 1947, continued so as to expire upon final determination of its application for permanent operating rights in No. MC-200 (Sub-No. 84). No. MC-200 (Sub-No. 84) has been heard at length. In the meantime, extensive operations under the outstanding temporary authority are being conducted. We may find that they should be continued or be curtailed. But until we do on the basis of the record now available to us we should not grant such a petition as this, unless it is required by law. As to the law applicable in the circumstances, I think the provisions of section 9 (b) of the Administrative Procedure Act on which the present order is based may still be considered controlling.

I am authorized to say that COMMISSIONERS LEE and KNUDSON join in this dissent.

COMMISSIONER PATTERSON was necessarily absent and did not participate in the disposition of this proceeding.

APPENDIX

Regular routes:

Dangerous explosives:

Between Kansas City, Mo., and New York, N. Y.: From Kansas City over U. S. Highway 40 to Kingdom City, Mo., thence over U. S. Highway 54 to its junction with U. S. Highway 36, near Pittsfield, Ill., thence over U. S. Highway 36 through Springfield, Ill., to Decatur, Ill., thence over Illinois Highway 48 to Onarga, Ill., thence over U. S. Highway 45 to Gilman, Ill., thence over U. S. Highway 24 to Fort Wayne, Ind., thence over U. S. Highway 30 through Van Wert, Ohio, to Delphos, Ohio, thence over U. S. Highway 30-N to Mansfield, Ohio, thence over U. S. Highway 42 to Cleveland, Ohio, thence over Ohio Highway 84 to Ashtabula, Ohio, thence over U. S. Highway 20 to its junction with U. S. Highway 62, thence over U. S. Highway 62 to its junction with New York Highway 5, near Buffalo, N. Y., thence over New York Highway 5 to Albany, N. Y., thence over U. S. Highway 9-W to Fort Lee, N. J., and thence across the George Washington Bridge to New York. Service is authorized to and from the intermediate points of Columbia, Mo., Springfield, Ill., Fort Wayne, Ind., Mansfield, Ashland, and Cleveland, Ohio, Erie, Pa., and Fredonia, Buffalo, Geneva, Syracuse, Utica, Schenectady, and Albany, N. Y., and the off-route point of Painesville, Ohio.

Between Albany, N. Y., and New York, N. Y.: From Albany over U. S. Highway 9 to New York. Service is authorized to and from the intermediate point of Yonkers, N. Y.

Between Kingdom City, Mo., and New York, N. Y.: From Kingdom City over U. S. Highway 40 through St. Louis, Mo., and Indianapolis, Ind., to Bridge-

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port, Ohio, thence over Ohio Highway 7 through Martins Ferry, Ohio, to its junction with U. S. Highway 22, near Steubenville, Ohio, thence over U. S. Highway 22 through Pittsburgh, Ebensburg, and Harrisburg, Pa., to Newark, N. J., thence over city streets and connecting highways to New York. Service is authorized to and from the intermediate point of St. Louis, Mo., East St. Louis, Ill., Terre Haute, Indianapolis, and Richmond, Ind., Springfield, Columbus, Martins Ferry, and Steubenville, Ohio, Pittsburgh and Harrisburg, Pa., and Newark and Jersey City, N. J., and the off-route points of McKees Rocks, Pa., and Hoboken and Passaic, N. J., with no service to or from Kingdom City.

Between Kansas City, Mo., and Pittsfield, Ill.: From Kansas City over U. S. Highway Alternate 69 to its junction with U. S. Highway 69, thence over U. S. Highway 69 to Cameron, Mo., and thence over U. S. Highway 36 through Macon, Mo., to Pittsfield. Service is authorized to and from the intermediate point of Hannibal, Mo., with no service to or from Pittsfield.

Between Springfield, Ill., and Chicago, Ill.: From Springfield over U. S. Highway 66 through Chenoa, Ill., to Chicago, Ill. Service is authorized to and from the intermediate point of Bloomington, Ill., and the off-route point of Joliet, Ill.

Between Kansas City, Mo., and Cameron, Mo.: From Kansas City over U. S. Highway Alternate 169 to its junction with U. S. Highway 169, thence over U. S. Highway 169 to St. Joseph, Mo., thence over U. S. Highway 36 to Cameron. Service is authorized to and from the intermediate point of St. Joseph, Mo., with no service to or from Cameron.

Between Kansas City, Mo., and Chenoa, Ill.: From Kansas City over U. S. Highway 24 through Peoria, Ill., to Chenoa. Service is authorized to and from the intermediate point of Peoria, Ill., and off-route point of Pekin, Ill., with no service to or from Chenoa.

Between Indianapolis, Ind., and Cincinnati, Ohio: From Indianapolis over U. S. Highway 52 to Cincinnati. Service is not authorized to or from intermediate points.

Between Kansas City, Mo., and Cincinnati, Ohio: From Kansas City over U. S. Highway 50 through Seymour, Ind., to Cincinnati. Service is authorized to and from the intermediate points of Sedalia and St. Louis, Mo., East St. Louis, Ill., and Lawrenceburg, Ind.

Between Harrisburg, Pa., and Philadelphia, Pa.: From Harrisburg over U. S. Highway 230 to Lancaster, Pa., thence over U. S. Highway 30 to Philadelphia. Service is not authorized to or from intermediate points.

Between Kansas City, Mo., and Omaha, Nebr.: From Kansas City over U. S. Highway 71 to its junction with U. S. Highway 275 near Savannah, Mo., thence over U. S. Highway 275 through Glenwood, Iowa, to junction Iowa Highway 375, thence over Iowa Highway 375 to Council Bluffs, Iowa, thence over U. S. Highway 6 to Omaha. Service is authorized to and from the intermediate points of St. Joseph and Rockport, Mo., and Council Bluffs, Iowa, and the off-route point of South Omaha, Nebr.

Between Glenwood, Iowa, and Peoria, Ill.: From Glenwood over U. S. Highway 34 to Galesburg, Ill., thence over U. S. Highway 150 to Peoria. Service is not authorized to or from intermediate points or Glenwood.

Between Chenoa, Ill., and Gilman, Ill.: From Chenoa over U. S. Highway 24 to Gilman. Service is not authorized to or from the termini or intermediate points.

Between Van Wert, Ohio, and Lodi, Ohio: From Van Wert over U. S. Highway 224 to Lodi. Service is not authorized to or from the termini or intermediate points.

Between Council Bluffs, Iowa, and Chicago, Ill.: From Council Bluffs over U. S. Highway 6 to Princeton, Ill., thence over U. S. Highway 34 to Chicago. Service is authorized to and from the intermediate points of Des Moines and Davenport, Iowa.

Between Chicago, Ill., and Cleveland, Ohio: From Chicago over U. S. Highway 20 and U. S. Highway B. R. 20 to Toledo, Ohio; thence over U. S. Highway 23 to its junction with U. S. Highway 6; thence over U. S. Highway 6 to Vermilion, Ohio; thence over Ohio Highway 60 to Birmingham, Ohio; thence over Ohio Highway 113 to Elyria, Ohio; thence over Ohio Highway 57 to its junction with Ohio Highway 254; thence over Ohio Highway 254 to Cleveland. Service is authorized to and from the intermediate point of Toledo, Ohio.

Between Chicago, Ill., and Fort Wayne, Ind.: From Chicago over U. S. Highway 41 to its junction with U. S. Highway 30 near Dyer, Ind.; thence over U. S. Highway 30 to Fort Wayne. Service is not authorized to or from intermediate points.

Between Lodi, Ohio, and Ebensburg, Pa.: From Lodi over U. S. Highway 224 to New Castle, Pa.; thence over U. S. Highway 422 to Ebensburg. Service is authorized to and from the intermediate point of Akron, Ohio. Service is not authorized to or from the termini.

Between Philadelphia, Pa., and Newark, N. J.: From Philadelphia over U. S. Highway 1 to Newark. Service is authorized to and from the intermediate points of Elizabeth, Trenton, Newark, and Jersey City, N. J., and the off-route points of Passaic and Hoboken, N. J.

Between Chicago, Ill., and junction U. S. Highways 41 and 30: From Chicago over U. S. Highway 330 to its junction with U. S. Highway 30; thence over U. S. Highway 30 to its junction with U. S. Highway 41 near Dyer, Ind. Service is not authorized to or from the intermediate points or the named junction.

Between Mansfield, Ohio, and Lancaster, Pa.: From Mansfield over U. S. Highway 30 to Lancaster. Service is authorized to and from the intermediate point of Pittsburg, Pa., with no service to or from Lancaster.

Between Albany, N. Y., and Boston, Mass.: From Albany over U. S. Highway 20 to Boston. Service is

authorized to and from the intermediate point of Springfield, Mass.

Between Louisville, Ky., and Indianapolis, Ind.: From Louisville over U. S. Highways 31E and 31 to junction with U. S. Highway 50; thence over U. S. Highway 50 to Seymour, Ind.; thence over U. S. Highway Alternate 31 to junction U. S. Highway 31; thence over U. S. Highway 31 to Indianapolis. Service is not authorized to or from intermediate points.

Between Irwin Tollgate at the junction of U. S. Highway 30 and the Pennsylvania Turnpike, and Harrisburg, Pa., (as an alternate route): from Irwin Tollgate over the Pennsylvania Turnpike to the Middlesex Tollgate, and thence over U. S. Highway 11 to Harrisburg. Service is not authorized to or from intermediate points.

Return over these routes.

Service is authorized to and from points in the Chicago, Ill., commercial zone as defined in Chicago, Ill., Commercial Zone, 1 M.C.C. 673, as intermediate and off-route points in connection with the above authorized regular-route operations.

Service is authorized over any combination of the above-described routes regardless of whether the routes joined have a common point of service.

Restriction: No service is authorized between Philadelphia and New York City or between Elizabeth, Trenton, Newark, Jersey City, and Passaic, on the one hand, and Philadelphia and New York City on the other.

No service is authorized between Boston, on the one hand, and New York City, Jersey City, Newark, Elizabeth, Passaic, Trenton and Philadelphia, on the other.

Dangerous explosives, over regular routes, in connection with said carrier's authorized regular routes, regardless of whether the routes used in combination have a common authorized point of service.

Between Decatur, Ill., and Indianapolis, Ind.: From Decatur over U. S. Highway 36 to Indianapolis. Service is not authorized to or from Decatur or the intermediate points.

Between Shoals, Ind., and Louisville, Ky.: From Shoals over U. S. Highway 150 to Louisville. Service is not authorized to or from Shoals or the intermediate points.

Between Indianapolis, Ind., and junction U. S. Highways 52 and 24 (near Kentland, Ind.): From Indianapolis over U. S. Highway 52 to junction U. S. Highway 24. Service is not authorized to or from the described junction or the intermediate points.

Between Cincinnati, Ohio, and Zanesville, Ohio: From Cincinnati over U. S. Highway 22 to Zanesville. Service is not authorized to or from Zanesville or the intermediate points.

Between Fort Wayne, Ind., and Toledo, Ohio: From Fort Wayne over U. S. Highway 24 to Toledo. Service is not authorized (1) over this route between Toledo, on the one hand, and, on the other, points east of the Illinois-Indiana State line, (2) to or from intermediate points.

Between Cleveland, Ohio, and Deerfield, Ohio: From Cleveland over Ohio Highway 14 to Deerfield. Service is not authorized to or from Deerfield, or the intermediate points.

Between New York, N. Y., and Springfield, Mass.: From New York over U. S. Highway 1 to New Haven, Conn., and thence over U. S. Highway 5 to Springfield. Service is not authorized to or from intermediate points. Return over these routes.

Dangerous Explosives:

Between Pittsburgh, Pa., and Detroit, Mich.: From Pittsburgh, Pa., over U. S. Highway 22 to Zanesville, Ohio, thence over U. S. Highway 40 to Columbus, Ohio, thence over U. S. Highway 33 to Marysville, Ohio, thence over Ohio Highway 31 to Kenton, Ohio, thence over U. S. Highway 68 to Toledo, Ohio, and

thence over U. S. Highway 24 to Detroit, Mich., and return over the same route. Service is authorized to and from the intermediate points of Zanesville, Toledo, and Columbus, Ohio; and the off-route points of Lancaster, Dayton, and Springfield, Ohio.

Between Charleston, W. Va., and Nitro, W. Va.: From Charleston over U. S. Highway 35 to Nitro, and return over the same route.

Between Charleston, W. Va., and Huntington, W. Va.: From Charleston over U. S. Highway 60 to Huntington, and return over the same route. Service is authorized to and from the off-route points of Kenova, Ceredo, and Owens, W. Va.

Between Clarksburg, W. Va., and Marietta, Ohio, as follows: From Clarksburg over U. S. Highway 50 to Parkersburg, W. Va., thence over U. S. Highway 21 to Marietta. From Clarksburg over U. S. Highway 50 to Belpre, Ohio, thence over Ohio Highway 7 to Marietta; and return over these routes to Clarksburg.

Service is authorized to and from the off-route points of Harrisville, Big Springs, Washburn, Mahone, Mount Zion, Grantsville, Cairo, and Smithville, W. Va.

Between Clarksburg, W. Va., and Charleston, W. Va: From Clarksburg over U. S. Highway 19 to Weston, W. Va., thence over U. S. Highway 119 via Clendenin, W. Va., to Charleston. From Clarksburg over U. S. Highway 19 to Sutton, W. Va., thence over West Virginia Highway 4 to Clendenin, W. Va., and thence to Charleston, as specified above; and return over these routes to Clarksburg.

Service is authorized to and from the off-route points of San Fork, Lost Creek, Burnsville, West Milford, Gilmer Station, McWhorter, Clay, and Crawford, W. Va.

Between Clarksburg, W. Va., and Pittsburgh, Pa.: From Clarksburg over U. S. Highway 19 to junction Bethel Road, thence over Bethel Road to Junction Pennsylvania Highway 88, thence over Pennsylvania Highway 88 to Overbrook, Pa.; and thence over Pennsylvania Highway 51 to Pittsburgh, and return

over the same route. Service is authorized to and from the off-route points of Coraopolis and McKees Rocks, Pa.

Between Morgantown, W. Va., and Pittsburgh, Pa., as follows: From Morgantown over U. S. Highway 119 to Uniontown, Pa., thence over Pennsylvania Highway 51 to junction Pennsylvania Highway 711, thence over Pennsylvania Highway 711 to Fayette City, Pa., thence over Pennsylvania Highway 906 via Milesville and Elizabeth, Pa., to East McKeesport, Pa., thence over U. S. Highway 30 to Pittsburgh. From Morgantown to Milesville as specified above, thence over Pennsylvania Highway 31 to junction Pennsylvania Highway 51, thence over Pennsylvania Highway 51 to Elizabeth, thence across the Monongahela River to West Elizabeth, Pa., thence over Pennsylvania Highway 837 to Pittsburgh; and return over these routes to Morgantown.

Between Uniontown, Pa., and Greensburg, Pa.: From Uniontown over U. S. Highway 119 to Greensburg, and return over the same route.

Between Clarksburg, W. Va., and Wheeling, W. Va., as follows: From Clarksburg over U. S. Highway 19 to Fairmont, then over U. S. Highway 250 to Wheeling. From Clarksburg over U. S. Highway 19 to junction West Virginia Highway 7, thence over West Virginia Highway 7 to Blacksville, W. Va., thence over West Virginia Highway 218 to the West Virginia-Pennsylvania State line, thence over Pennsylvania Highway 218 to Waynesburg, Pa., thence over U. S. Highway 19 to Washington, Pa., and thence over U. S. Highway 40 to Wheeling; and

Return over these routes to Clarksburg. Service is authorized to and from the off-route points of Grant Town, Brady, Dakota, Lumberport, Fairview, Star City, Lowesville, Everettsville, Booth, Arnettsville, Pursglove, National and Carolina, W. Va.

Between Clarksburg, W. Va., and French Creek, W. Va.: From Clarksburg over West Virginia Highway 20 to French Creek, and return over the same route.

Between Clarksburg, W. Va., and Elkins, W. Va.: From Clarksburg over West Virginia Highway 20 to Hodgesville, W. Va., thence over U. S. Highway 119 to Philippi, W. Va., and thence over U. S. Highway 250 to Elkins, and return over the same route. Service is authorized to and from the off-route points of Volga, Coalton, Century, Norton, and Meriden, W. Va.

Between Clarksburg and Grafton, W. Va.: From Clarksburg over U. S. Highway 50 to junction West Virginia Highway 77, thence over West Virginia Highway 77 to junction U. S. Highway 250, thence over U. S. Highway 250 to Philippi, W. Va., and thence over U. S. Highway 250 to Grafton, and return over the same route. Service is authorized to and from the off-route points of Brownton and Wendel, W. Va.

Between Clarksburg, W. Va., and Kingwood, W. Va., as follows:

From Clarksburg, over U. S. Highway 50 to Fellowsville, W. Va., thence over West Virginia Highway 26 to Kingswood.

From Clarksburg to Fellowsville as specified above, thence over West Virginia Highway 26 to junction unnumbered highway, and thence over unnumbered highway to Kingwood; and

Return over these routes to Clarksburg. Service is authorized to and from the off-route points of Newburgh, Independence, and Camp Dawson, W. Va.

Between Morgantown, W. Va., and Red House, Md.: From Morgantown over West Virginia Highway 7 to the West Virginia-Maryland State line, thence over Maryland Highway 39 to Oakland, Md., and thence over U. S. Highway 219 to Red House, and return over the same route. Service is authorized to and from the off-route points of Deer Park and Mountain Lake Park, Md.

Between Newcreek, W. Va., and Cumberland, Md.: From Newcreek over U. S. Highway 220 to Cumberland, and return over the same route. Service is authorized to and from the off-route point of Piedmont, W. Va.

Between Pittsburgh, Pa., and Charleston, W. Va.: From Pittsburgh over U. S. Highway 19 to Washington, Pa., thence over U. S. Highway 40 to Wheeling, W. Va., thence over West Virginia Highway 2 to Parkersburg, W. Va., and thence over U. S. Highway 21 to Charleston, and return over the same route.

Service is authorized to and from the off-route points of Ravenswood and Elizabeth, W. Va., and points on West Virginia Highway 2 between Weirton and Wheeling, W. Va.

Service is authorized to and from all intermediate points on the above-specified routes.

Between Charleston and Clarksburg, W. Va., and Baltimore, Md., as follows: From Charleston over U. S. Highway 60 to Lexington, Va., thence over U. S. Highway 11 to Winchester, Va., thence over U. S. Highway 50 to Washington, D. C. and thence over U. S. Highway 1 to Baltimore.

From Clarksburg over U. S. Highway 50 to Washington, D. C., thence over U. S. Highway 1 to Baltimore; and

Return over these routes to Charleston and Clarksburg.

Service is authorized to and from all intermediate points in West Virginia and the off-route points of Ronceverte, Montgomery, Cabin Creek, Rowlesburg, Elk Garden, Blaine, and Manheim, W. Va., without restriction; the intermediate points of Winchester and Rosslyn, Va., for traffic other than that moving from points in Maryland, Virginia, and the District of Columbia, and the off-route points of Luray and Alexandria, Va., for traffic other than to or from points in Maryland and Virginia; and Beltsville, College Park, and Hyattsville, Md., restricted to traffic moving to or from points in West Virginia.

Between Hagerstown, Md., and Winchester, Va.: From Hagerstown over U. S. Highway 11 to Winchester, and return over the same route. Service is not authorized between termini or to or from intermediate points.

Between Martinsburg, W. Va., and Charlestown, W. Va.: From Martinsburg over West Virginia Highway 9 to Charlestown, and return over the same route. Service is not authorized between termini or to or from intermediate points.

Between Pittsburgh, Pa., and Baltimore, Md.: From Pittsburgh over U. S. Highway 30 to McConnellsburg, Pa., thence over Pennsylvania Highway 16 to the Pennsylvania-Maryland State line, thence over Maryland Highway 32 to Westminster, Md., and thence over U. S. Highway 140 to Baltimore, and return over the same route. Service is authorized to and from the intermediate and off-route points of Greensburg, Jeanette, Monessen, Fayette City, Charleroi, and McKeesport, Pa.

Between Wheeling, W. Va., and Washington, D. C.: From Wheeling over U. S. Highway 40 to Frederick, Md., thence over U. S. Highway 240 to Washington, and return over the same route. Service is authorized to and from intermediate points, as follows: Washington, D. C. restricted to traffic moving to or from points other than those in Maryland; all other intermediate points without restriction; and the off-route points of Bellaire, Martin's Ferry, Yorkville, and Steubenville, Ohio.

Between Winchester, Va., and Baltimore, Md.: From Winchester over U. S. Highway 340 to Frederick, Md., thence over U. S. Highway 40 to Baltimore, and return over the same route.

Service is not authorized between termini.

Service is authorized to and from all intermediate points restricted to traffic moving to or from points in West Virginia, Ohio, or Pennsylvania.

Between Luray, Va., and Washington, D. C.: From Luray over U. S. Highway 211 to Washington, and return over the same route. Service is not authorized between termini or to or from intermediate points.

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Between Pike, W. Va., and Marietta, Ohio: From Pike over Alternate U. S. Highway 50 to Marietta, and return over the same route. Service is not authorized to or from intermediate points.

Between Grafton, W. Va., and Morgantown, W. Va.: From Grafton over U. S. Highway 119 to Morgantown, and return over the same route. Service is not authorized to or from intermediate points.

Between Pittsburgh, Pa., and Ford City, Pa.: From Pittsburgh over Pennsylvania Highway 28 to junction Pennsylvania Highway 128, thence over Pennsylvania Highway 128 to Ford City, and return over the same route. Service is authorized to and from the intermediate points of Creighton and Brackenridge, Pa.

Between Greensburg, Pa., and Brackenridge, Pa.: From Greensburg, Pa., over Pennsylvania Highway 66 to junction Pennsylvania Highway 366, thence over Pennsylvania Highway 366 to New Kensington, Pa., thence across the Allegheny River to junction Pennsylvania Highway 28, and thence over Penasylvania Highway 28 to Brackenridge, and return over the same route.

Service is not authorized to or from intermediate points.

Irregular routes:

Dangerous explosives:

From Fairfax, Kans., to all points and places in Iowa, Illinois, Indiana, Ohio, New York, New Jersey, and Pennsylvania.

From Norwalk and South Norwalk, Conn., and Gloucester, Mass., to Kansas City and St. Louis, Mo., and Chicago, Ill.

From Omaha, and Falls City, Nebr., Council Bluffs, Harlan, and Des Moines, Iowa, Chicago, Ill., from points and places in Missouri on and south of U. S. Highway 24 and on and west of U. S. Highway 65, and from points and places in Kansas on, east, and north of a line beginning at the Kansas-Nebraska State line, and extending along U. S. Highway 77 to Riley, Kans., thence along U. S. Highway 24 to

Topeka, Kans., thence along U. S. Highway 75 to Yates Center, Kans., and thence along U. S. Highway 54 to the Kansas-Missouri State line, to Louisville, Ky., and to points and places in Illinois, Ohio, Pennsylvania, New York, New Jersey, Connecticut, and Massachusetts, on the regular routes shown above.

Return with no transportation for compensation except as otherwise authorized.

Restriction: The above-specified commodity may not be transported to or from points on the regular routes authorized above.

Dangerous explosives, in truckload lots:

Between Washington, D. C., on the one hand, and, on the other, points and places in West Virginia, traversing Virginia and Maryland for operating convenience only.

From Clarksburg, Charlestown, and Bluefield, W. Va., to points and places in West Virginia, with no transportation for compensation on return except as otherwise authorized.

The authority granted herein and that previously granted said carrier to the extent they duplicate, shall not be construed as conferring more than one operating right. Any repetition in the statement of authority granted shall not be construed as conferring duplicate operating rights.